of Clarkstown, 511 U.S. 383 (1994), was unconstitutional under *Pike*, even though that ordinance operated identically on in-town and out-of-town waste processors. See *id.* at 404-405 (O'Connor, J., concurring in the judgment). Respondents make no response to this point, which is flatly inconsistent with their submission.

In this regard, we note that respondents' discussion of *Pike* misstates our position. We certainly do not suggest that facially neutral state laws can never have disparate, adverse practical effects on interstate commerce. See Br. in Opp. 14. We do not maintain that any disparate effect of a state regulation on interstate commerce, "however minor," would be "'virtually *per se* invalid.'" *Id.* at 14-15. And our understanding of *Pike* does not invite challenges to "virtually any legislation affecting commerce" (*id.* at 15); potential plaintiffs, who must shoulder the burden of demonstrating the invalidity of state law under *Pike*, have no incentive to bring insubstantial lawsuits – and they have not done so in those circuits where our (and, we submit, the proper) understanding of *Pike* prevails. But however that may be, the courts of appeals are in conflict, the issue is an enormously important one, and guidance from this Court is needed. Further review accordingly is in order.

CONCLUSION

For the foregoing reasons and those stated in the petition, the petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit should be granted.

Respectfully submitted.

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JULY 2005